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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,205

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Isao Ochi

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7590

04/28/2009

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EXAMINER

KRAUSE, ANDREW E

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/28/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/581,205	<b>Applicant(s)</b> OCHI, ISAO	
	<b>Examiner</b> ANDREW KRAUSE	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

### *Status of Claims*

1. Claims 1-5 remain pending. Claims 1 and 4 have been amended in applicant's reply, filed 1/21/09.

### *Response to Amendment*

2. Applicant's amendments to the specification and claims in the response filed 1/21/09 have overcome the objections thereto.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1-5** are rejected under 35 U.S.C. 102(b) as being anticipated by Sugihara et al (JP 05-023094 (Abstract and English translation)).
5. **Regarding claim 1** Sugihara discloses a process for producing wheat dough (see the translation of the example, section [0030], wherein a sponge cake dough containing wheat flour is produced), which comprises adding soybean protein as a mixture with liquid sugar (see section [0030]-this is the oil-in-water type oil and fat composition) to wheat flour. The soybean protein and liquid sugar mixture is

produced by mixing a sugar liquid (see Abstract) and a gelling agent (see Abstract) such as soybean protein (see claim 2) to form a plastic mixture. The mixture is then added to wheat flour to form a sponge cake ([0030]-[0031]).

6. **Regarding claim 2**, Sugihara discloses that the soybean protein constituent (the gelling agent) of the soybean protein-liquid sugar mixture is 1.5-22.5% by weight (see abstract and claim 2).
7. **Regarding claim 3**, Sugihara discloses using 70% sorbitol syrup as the liquid sugar ([0027]). Applicant admits that commercially available sugars in the form of a liquid having appropriate water activity values include liquid sorbitol (p. 6, line 20-p. 7 line 1 of the specification).
8. **Regarding claim 4**, Sugihara discloses a recipe for wheat dough, which includes ingredients totaling 360 parts. Of these 360 parts, 75 parts are the protein and liquid sugar mixture, which can contain 22.5% soybean protein, allowing for approximately 16.5/360 parts, or 4.6% by weight of the dough to be composed of the soybean protein constituent.
9. **Regarding claim 5**, Sugihara discloses the process for producing a wheat product according to claim 1, and provides an example for producing an angel food cake dough according to claim 1. The translation of Sugihara does not explicitly disclose

heating the wheat dough. However, angel food cake is a baked product; therefore it is inherent that the dough will be heated.

***Response to Arguments***

10. Applicant's arguments filed 1/21/09 have been fully considered but they are not persuasive.
11. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., mixing fats and oils with the protein and sugar mixture at a later time) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
12. Applicants state that, "Obviously, the composition of the reference which contains fats and oils is different from the plastic mixture of the present invention". However, the claims recite the term "comprising", and thus the claimed method encompasses these additional steps
13. Finally, applicants argue that, "As described on page 6, lines 4 to 6, it is essential to add a plastic mixture of soybean protein and a sugar in the form of liquid to wheat flour. The reference does not teach or suggest the necessity of this essential feature of the present invention." As stated in the rejection above, Sugihara discloses a

method of preparing a wheat dough comprising the steps of preparing a plastic mixture by mixing soybean protein with a liquid sugar, and adding it to wheat flour to form a wheat dough (abstract and [0030]-[0031]).

### *Conclusion*

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KRAUSE whose telephone number is (571)270-7094. The examiner can normally be reached on 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANDREW KRAUSE/  
Examiner, Art Unit 1794

/KEITH D. HENDRICKS/  
Supervisory Patent Examiner, Art Unit 1794